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Department of Water Resources

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)	91-00005
)	
Case No. 39576)	AMENDED ORDER SETTING
)	DEADLINE FOR IDWR TO FILE
)	DIRECT TESTIMONY AND
)	SETTING INITIAL HEARING ON
)	BASIN-WIDE ISSUE 5 ON
)	REMAND-CONJUNCTIVE
)	MANAGEMENT SNAKE RIVER
)	BASIN-WIDE

Pursuant to the status hearing in Orofino, Idaho held on November 18, 1999 on the issue of conjunctive management, the following is hereby ordered:

1. Until the issue of conjunctive management is fully decided, both factually and legally, and so as to not delay the issuance of (generally uncontested) partial decrees which are otherwise ripe for entry, the following language shall be placed in all partial decrees:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. I.C. § 42-1412(6).

2. The above language will appear in all partial decrees, including domestic and stock water partial decrees.

3. The Court, by separate written Amended Order of December 3, 1999, has re-designated conjunctive management as Basin-Wide Issue 5 on Remand – Conjunctive Management, Snake River Basin-Wide. As stated in that Order, if there are factual issues

unique to a particular sub-basin relative to the interconnection of sources of water, then those issues will be dealt with in that particular sub-basin (e.g. Basin 34).

4. As previously ordered, those parties who objected to IDWR's proposed conjunctive management language in Basin 34 shall file with the Court by December 20, 1999, a statement of the relief requested. These filings shall also be served by the objectors on all interested parties. The hearing involving the issues unique to Basin 34 is to be held in Arco, Idaho on Thursday, January 13, 2000 at 10:00 a.m., as set by this Court's prior Order of November 10, 1999.

5. The Court intends to hold several evidentiary hearings on conjunctive management, beginning with prefiled direct testimony by the Director of IDWR and/or his designated representative of IDWR on those matters stated in paragraph 9 of this order and an initial, limited hearing to be followed by more extensive evidentiary hearings.

6. The Court hereby sets the deadline for the prefiled direct testimony of IDWR as December 30, 1999. The testimony shall be included in full in the December 1999 Docket sheet, published January 7, 2000 and shall be mailed by IDWR to all parties listed in the certificate of service for Basin Wide Issues 5, 5-34, 5-36 and 5-57. The court further sets an initial evidentiary hearing to begin at 10:00 a.m. on February 24, 2000, at which the Director of IDWR and/or his designated representatives of IDWR shall appear and present direct testimony and other evidence of the matters stated in paragraph 9 of this Order and be subject to cross examination limited to the scope of the prefiled direct testimony. The hearing will be at the Federal Building, 304 North 8th Street, Boise, Idaho.

7. At subsequent evidentiary hearings, IDWR will be required to present more specific and detailed evidence, including but not limited to both the legal and factual basis and necessity for the proposed conjunctive management provisions. Other interested parties may present evidence as well. Interested parties, and/or their legal counsel will be

provided the opportunity to cross examine all witnesses at these subsequent hearings, subject to regulation by the Court in accordance with I.R.E. 611.

8. For evidentiary hearings following the initial hearing, IDWR will be required to pre-file with the Court its intended evidence so as to allow all interested parties and/or their counsel to be better prepared for the hearing and for cross examination purposes. The dates for this and other hearings will be set in the future.

9. In accordance with the Supreme Court's directives on remand from *A & B Irrigation v. Idaho Conservation*, 131 Idaho 411, 958 P.2d 568 (1998-rehearing), IDWR shall address at least the following issues at the initial hearing:

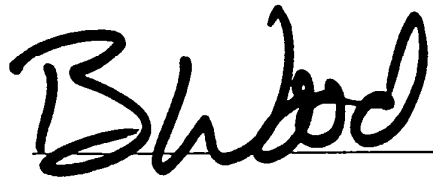
- a. A precise definition of conjunctive management.
- b. The basis for IDWR's generic recommendation for a general provision addressing conjunctive management.
- c. The interplay between the sub-basin specific language and the general interconnection language, and
- d. an explanation of how the proposed general provision is tailored to provide specific exceptions for each sub-basin within the overall Snake River Basin.

10. The Court needs to determine how to give notice to the holders of partial decrees which have already issued that their decrees will be subject to the general provisions ultimately adopted (see paragraph 1 of this order). The Court asks for input from IDWR, the Claimants and the attorneys on how best to do this. This will also be taken up at the hearing to be held on January 20, 2000 at 1:30 p.m. at the monthly status conference. The hearing will be held at The Federal Building, 304 North 8th Street, Boise, Idaho.

11. A copy of this *Amended Order Setting Initial Hearing On Basin-Wide Issue 5 On Remand – Conjunctive Management Snake River Basin-Wide* shall appear on the docket sheet and shall be served on all necessary parties and/or their counsel listed in the certificate of service for Basin Wide Issue 5, 5-34, 5-36 and 5-57.

IT IS SO ORDERED:

DATED December 17, 1999.

A handwritten signature in black ink, appearing to read "B Wood", written over a horizontal line.

BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the **AMENDED ORDER SETTING DEADLINE FOR IDWR TO FILE DIRECT TESTIMONY AND SETTING INITIAL HEARING ON BASIN-WIDE ISSUE 5 ON REMAND – CONJUNCTIVE MANAGEMENT SNAKE RIVER BASIN-WIDE** was mailed with sufficient first-class postage on December 17, 1999 to:

Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resources Division
550 W Fort St, MSC 033
Boise, ID 83724

All parties listed on the Court Certificate of Mailing for 91-00005;
All parties listed on the Court Certificate of Mailing for 91-00005-34;
All parties listed on the Court Certificate of Mailing for 91-00005-36;
And all parties listed on the Court Certificate of Mailing for 91-00005-57.



Deputy Clerk of the Court